solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to Article III, Section 21 of the Rules of Fair Practice. Proposed new language is italicized.

Books and Records

Sec. 21.

* * * * *

Cold Call Requirements

(*g*) *Each member shall make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such member or its associated persons.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD had prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to the Telephone Consumer Protection Act (TCPA), which became law in 1991, the Federal Communications Commission (FCC) developed rules, effective December 20, 1992, to protect the rights of telephone consumers while allowing legitimate telemarketing practices. In addition, the Telemarketing and Consumer Fraud and Abuse Prevention Act (''Prevention Act'') became law in August, 1994, and requires the Federal Trade Commission (FTC) to adopt rules on abusive cold calling within twelve (12) months.

Members who engage in telephone solicitation to market their products and services are subject to the requirements of the rules of the FCC and FTC relating to telemarketing practices and the rights of telephone consumers and shall refer to FCC rules for specific restrictions on telephone solicitations. This includes, but is not limited to, the requirements to make and maintain a list of persons who do not want to receive telephone solicitations (a ''do-not-call'' list).

The Prevention Act also requires the SEC to engage in its own additional rulemaking, or, alternatively, to require the SROs to promulgate telemarketing rules consistent with the legislation. In August of 1994, SEC Chairman Arthur Levitt wrote to the NASD and NYSE urging the SROs to adopt a rule similar to the cold calling rule established by the FCC. Since then, there have been ongoing discussions between the SEC and SROs on the structure of a rule or rules to apply pursuant to the Prevention Act. As a first step, the NASD is proposing to adopt a rule to implement that portion of the FCC rules that requires the establishment and maintenance of a do-not-call list. The proposed rule would add new Subsection (g) to Section 21 of Article III of the Rules of Fair Practice to require that each member who engages in telephone solicitation to market its products and services shall make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such member of its associated persons.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[1] which require that the Association adopt and amend its rules to promote just and equitable principles of trade, and generally provide for the protection of customers and the public interest in that the proposed rule change establishes minimum standards designed to protect members' customers against abusive telemarketing practices.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–95–13 and should be submitted by May 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–11190 Filed 5–5–95; 8:45 am]

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[Release No. 34–35661; File No. SR–NYSE–95–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Near Neighbor Approach to Measuring Specialist Performance

May 2, 1995.

Pursuant to Section 19(b) (1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b) (1), notice is hereby given that on February 28, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

[1] 15 U.S.C. 78*o*–3.

[2] 17 CFR 200.30–3(a)(12).

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change, to be implemented on a fifteen month pilot basis,[1] consists of adopting a new approach to measuring specialist performance that would compare certain performance measures of a given stock (price continuity, depth, quotation spread and capital utilization) to those of its ''near neighbors,'' *i.e.*, stocks that have certain similar characteristics.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In recent years, the Exchange has sought to create objective measures of market quality and specialist performance. The Securities and Exchange Commission has also encouraged the Exchange ''to develop relative, objective standards of performance for evaluating specialists.''[2] The Exchange has responded, in part, by implementing on a pilot basis the capital utilization measure of specialist performance, which measures the dollar value of a specialist's proprietary trading[3] in relation to the total dollar value of shares traded in the specialist's stocks.[4]

The Exchange has continued its efforts to develop additional objective measures of specialist performance over the past several years, and has retained consultants from the Massachusetts Institute of Technology to assist in this endeavor. Working with the consultants, the Exchange has developed a new approach to evaluating specialist performance that compares the performance in a stock over ''rolling'' three-month periods to the performance of stocks with similar trading characteristics (''near neighbors''). The market quality measures are price continuity,[5] market depth,[6] quotation spread,[7] and specialist capital utilization.[8]

As with the capital utilization measure, stocks would continue to be separated into three broad stock categories: (1) stocks in the top 200 stocks in the S&P 500 Stock Index and other stocks that are as active; (2) the remaining component stocks of the S&P 500 Index and stocks among the 500 most active stocks on the Exchange; and (3) all other stocks. A number of securities are excluded, as with the capital utilization measure.[9]

Each month, each of the specialist unit's eligible stocks is classified as belonging to one of the three broad categories noted above. A determination is then made for each individual stock (the ''target stock'') as to which other stocks are statistically similar to it (its ''near neighbors''), based on certain market characteristics. The characteristics that are used in this determination are price, non-block volume, daily high low range, and the dollar value of the stock's ''float'' (*i.e.*, shares that are available for trading that are not closely held).[10] A statistical formula is applied to each stock's four market characteristics to determine its statistical ''distance'' from the target stock. Stocks with distances of 1.000 or less are considered to be ''near neighbors'' of the target stock. Stocks with distances greater than 1.000 are considered to be too different to be considered ''near neighbors'' of the target stock.[11]

For all stocks with three or more near neighbors, a single weighted[12] average performance percentage combining the results for all the near neighbors is calculated for each market quality measure. Then, using statistical techniques involving standard deviations, each target stocks' actual performance in the market quality measures listed above is compared to the combined performance of its near neighbors.

When a comparison with its near neighbors is made, the target stock is then placed into one of the three groups: a stock whose performance is statistically significantly poorer than the mean performance of the near neighbor stocks is classified in the ''Below Mean'' group; a stock whose performance is statistically similar to the mean performance is classified in the ''Mean'' group; and a stock whose performance is statistically significantly better than the mean is classified in the ''Above Mean'' group. Stocks that have fewer than three near neighbors are automatically classified in the ''Mean'' group. An additional analysis is performed on the stocks in the ''Mean'' group to highlight those stocks that have relatively high performance even though that performance is statistically similar

[1] *See* letter from James Buck, NYSE, to Katherine Simmons, SEC, dated March 7, 1995.

[2] *See* Division of Market Regulation, 088SEC, *The October 1987 Market Break* (February 1988), at p. xvii.

[3] *See infra* note 8.

[4] The Commission approved the capital utilization measure of specialist performance on a one-year pilot basis in Securities Exchange Act Release No. 33369 (December 23, 1993), 58 FR 69431 (December 30, 1993). The Commission approved a six-month extension to the pilot program in Securities Exchange Act Release No. 35175 (December 29, 1994), 60 FR 2167 (January 6, 1995) (extending pilot through June 30, 1995).

[5] Continuity, the change in price from trade to trade, is measured by the percentage of trades with a change of ⅛ point or less from the previous trade.

[6] Depth, the maximum price change over a 3,000-share sequence of trades, is measured by the percentage of depth sequences with a high/low range of ⅛ point or less.

[7] Spread, the difference between the bid price and the ask price, is measured by the percentage of reported quotations with a spread of ¼ point or less.

[8] A capital utilization percentage is derived for each specialist unit by dividing the average daily dollar value of the unit's stabilizing purchases and sales by the average daily total dollar value of shares traded in the unit's stocks. Capital utilization is measured two ways: (1) using stabilizing dealer volume; and (2) using stabilizing plus reliquifying dealer volume.

[9] The following stocks are excluded from the current capital utilization measure and the near neighbor analysis: foreign stocks, preferred stocks, warrants, when issued stocks, IPOs (for the first 60 days), closed-end funds, stocks selling for $5 and under, stocks with less than 2,000 shares average daily trading volume, and stocks that have been delisted for more than six months. The following stocks are excluded from near neighbor analysis and as discussed below are being proposed to be excluded from the capital utilization measure in this rule filing: stocks with two classes of shares, merger/acquisition stocks if there was a significant impact on the price or volume, and stocks which have been delisted for more than half of the examination period. *See infra* note 13.

[10] A stock will be considered ''similar'' to a target stock if: (1) the median average daily price is within 30% of a target stock under $20, or within $6 of a target stock between $20 and $60, or within 10% of a target stock above $60; (2) the median daily non-block volume (*i.e.*, trades under 25,000 shares) is within 30% of the target stock; (3) the median daily high-low range equals the median high-low range of the target stock +/− 7.5% of:

i. 30% of the price for a target stock under $20

ii. $6 for a target stock between $20 and $60,

iii. 10% of the price for a target stock above $60 and (4) the market value of the float is within 30% of the target stock.

[11] if there are more than 20 stocks with distances of 1.000 or less, only the 20 stocks that are closest to the target stock are used in the analysis.

[12] The weight of a near neighbor stock decreases as its distance from the target stock increases. If a stock's distance from the target stock is less than 0.500, then its weight is 1.000. If a stock's distance from the target stock is greater than 0.500, then its weight is less than 1.000.

to the calculated average of their near neighbors. A ''Mean'' group stock will be considered to have ''relatively high performance'' if its performance percentage is in the top quartile of all stocks in its stock category (*i.e.*, top 200, next 300, or other).

Each specialist unit would receive three reports each month containing the results of the near neighbor analyses for the three most recent months combined. These would include: (1) A Stock Detail Report for each stock that provides market data and performance information about the stock and each of the other stocks that were identified as its ''near neighbors,'' (2) a Stock Summary Report that lists each stock and provides data on the performance of the target stock and the average performance of its near neighbors, as well as whether the target stock's performance is ''Below Mean,'' ''Mean,'' or ''Above Mean,'' for each performance measure, and (3) a Specialist Unit Summary Report that shows, for each performance measure and within each stock category, the number of stocks that are in each group classification, and the percentage of the unit's total stocks that are in each group classification. The Unit Summary Report also shows the percentage of the unit's ''Mean'' group stocks that had high performance percentages.

The Allocation Committee would receive only the summary data appearing on the Specialist Unit Summary Report, which will be updated each month (covering the three most recent months) upon the distribution of the reports to the specialist units. The Allocation Committee would not receive performance data for individual stocks. The Allocation Committee would also receive a list of each unit's stocks that had fewer than three near neighbors and were automatically classified in the ''Mean'' group. Included with each stock will be its percentage of the unit's total dollar value of shares traded.

The Exchange is proposing that this new approach to measuring specialist performance be implemented on a fifteen month pilot basis. During the pilot period, the Exchange will continue to study the near neighbor methodology with a view toward recommending such enhancements or modifications as may be appropriate as experience is gained with this approach to evaluating specialist performance.

The Exchange is also proposing the following modifications to the specialist capital utilization performance measure to ensure commonality between it and near neighbor: (1) Exclusion of stocks with two classes of shares (*e.g.*, Class A & Class B), ''merger/acquisition'' stocks if there was a significant impact on the price or volume, and stocks that have been delisted for more than half of the examination period; [13] and (2) reduction of the performance review period from a ''rolling'' 12 months to a rolling three months. With respect to the new exclusion for stocks with two classes of shares and stocks subject to merger and acquisition activity that significantly impacts the price or volume of the subject security, the Exchange believes the stocks' trading patterns to be such that they cannot reasonably be compared to other stocks that do not trade in the same manner. The performance review period is proposed to be reduced to a rolling three month period in order to give more prompt feedback of performance changes.

2. Statutory Basis

The basis under Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with these requirements in that developing objective measures of specialist performance using a near neighbor approach would help perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[13] The rule filing and Amendment No. 1, *see supra* note 1, propose to exclude stocks which have been delisted for more than six months based upon the current rolling twelve month performance review period. However, because the Exchange is proposing to change the review period to a rolling three month period, the Exchange will amend the filing to provide that stocks which have been delisted for more that half the review period will be excluded. Conversation between Don Siemer, NYSE, and Katherine Simmons, SEC, May 1, 1995.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–95–05 and should be submitted by May 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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